IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

Crl.MC.No. 3398 of 2007()

AGAINST THE ORDER DATED / / IN CMP.2806/2007 IN CMP.2699/2007 of JUDL.MAGISTRATE OF FIRST CLASS-II, MANANTHAVADY
CRIME NO.229/07 OF MANANTHAVADY POLICE STATION

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PETITIONER: ACCUSED:

JAMES JOSEPH, S/O. JOSEPH,
AGED 30, KANHIRATHINGAL HOUSE, OZHAKKODI,
MANANTHAVADY, WYNADU DISTRICT.

BY ADV. SRI.JOSE J.MATHAIKAL

RESPONDENTS: STATE:

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1. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE,
MANANTHAVADY POLICE STATION, WYNADU DISTRICT.

BY P.P. SRI. GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Crl.M.C. No.3398 OF 2007

Dated this the 12th day of November, 2007

ORDER

The petitioner faces allegations in a crime registered under Secs.489B and C of the IPC. The petitioner was arrested on 18/5/07. He continues in judicial custody. Default bail under Sec.167(2) of the Cr.P.C. was granted to him as per the order of the learned Magistrate dated 18/9/07. The bail was granted subject to conditions. The petitioner is aggrieved by a condition imposed. According to him, the said condition is too onerous for him to comply now. He is in custody. He has no one to look after his interest. Insistence on the condition obliges the petitioner to continue in custody. Till today i.e., 12/11/07, the petitioner has not been able to avail the advantage or benefit of the order granting bail dated 18/9/07. In these circumstances, he prays that the said

condition may be deleted.

2. The said condition is that the sureties must produce solvency certificates for the amount of Rs.50,000/- before executing the bond. It is also submitted that they should have independent title to the properties and solvency certificates issued on joint property will not be accepted. The learned counsel for the petitioner submits that these conditions are working out great injustice against the petitioner obliging him to continue in custody even after elapse of about six months from the date of his arrest. Appropriate modification may be brought about. The learned Magistrate may be directed not to rigidly insist on production of solvency certificates. The learned Magistrate may be directed to accept the sureties if they are found to be sufficient, solvent and acceptable without rigidly insisting on production of solvency certificates.

3. In the peculiar facts and circumstances of this case, I find merit in the request of the learned counsel for the petitioner. It is evident that the insistence on the said condition is obliging the petitioner to continue in custody though he has been granted regular bail subject to conditions on 18/9/2007. I am satisfied that the learned Magistrate can be directed not to rigidly insist on production of solvency certificates. The sureties

can instil the requisite satisfaction in the mind of the learned Magistrate by producing whatever documents are available with them. The learned Magistrate must go through such documents carefully and if they inspire confidence, the same must certainly be accepted without insisting rigidly on the ritualistic production of solvency certificates. In the peculiar facts and circumstances of this case, such clarification, I am satisfied, shall serve the ends of justice.

4. In the result, this petition is allowed. The said condition that the sureties must produce the solvency certificates and that such solvency certificates should not be on joint property is hereby deleted. The learned Magistrate must consider the sufficiency, adequacy and the solvency of the sureties on the basis of whatever materials are placed before him and appropriate decision shall be taken in the matter.

Sd/-
(R. BASANT, JUDGE)

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P.S. to Judge